



A Survey of E-Mail Record Retention and Archival Classes At the State and Federal Levels of Government

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Executive Summary

ITE has researched the records retention categories from state governments, the federal government and various public institutions as they relate to e-mail. In conducting this research, e-mail (with certain specified content and used for specific purposes) is universally considered an official record in every jurisdiction and in every public institution I checked. Categorization and archival practices for e-mail vary from implementation to implementation, however. In some cases, there is clear direction that e-mail be categorized and archived, however, there is no clear guidance as to how this is to be accomplished (or guidelines are pending). To address the legal, business and risk management implications of e-mail retention, one alternative is selective retention where e-mail defaults to a single, short retention period, but legally or operationally significant categories can be identified, defined and segregated for longer-term retention. A more expeditious and less costly alternative is short-term e-mail retention.

All of the approaches in this report requiring the classification of e-mail and selective retention have common drawbacks. While identification of substantive e-mail might be conceptually simple, consistent application of any rules in a high-volume workplace environment is likely to pose a formidable challenge, and if not properly done, could lead to very inconsistent retention and the loss of valuable or required information.

The Case for a Short-Period E-Mail Retention¹

The mix of authorities above appears to lead to the conclusion that long-term categorical retention of most or all e-mail is unavoidable for many organizations. There are, however, countervailing considerations with considerable legal, business and risk management implications.

The Smoking Gun. The first and most obvious of these is the so-call "smoking gun" phenomenon. This is well-known to most corporate information managers, and consists of e-mail with embarrassing or legally damaging content. The material is commonly produced in lawsuits -- very much against the wishes of its custodian -- and has been a prominent factor in many lawsuits, some very high profile².

Privacy. The second of these are privacy laws and their e-mail-related ramifications. A number of jurisdictions have adopted data privacy laws imposing very strict controls on the use and transmission of "personal" information concerning individuals, including employees of businesses. The gist of such laws is that, absent permission from the person it concerns, personal information may only be used for the lawful purpose for which it was collected, it must be maintained only for the period of time for which it is actually needed for that purpose, and it may not be transmitted to a jurisdiction which does not have a comparable level of protection in

¹ Excerpt from: Montaña, John C. *Legal Obstacles to E-Mail Message Destruction*. The ARMA International Educational Foundation, October 19, 2003 (<http://www.armaedfoundation.org/main.html>)

² See, e.g., *United States v. Microsoft*, Nos. 98-1232 (TPJ) and No. 98-1233 (TPJ) D. C. Dist. Ct. (2000) (E-mail concerning anti-competitive practices in an antitrust lawsuit); *Securities and Exchange Commission v. Martha Stewart and Peter Bacanovic*, 03 CV 4070 (NRB) (N.D. N.Y. 2003) (electronic messages alleged to be probative of improper stock trading); *United States v. Quattrone*, (e-mail alleged to be probative of illegal activity including spoliation of evidence).

place. Such laws are rapidly becoming very widespread³, and regulators are taking a broad view of what constitutes "personal" information; and even in jurisdictions without an overall privacy law, there are also a great many subject-specific laws concerning medical information, financial information, and other data⁴. E-mail's ubiquitous use as a corporate communications tool, potentially and actually used for routine transmission of personal information about employees, business partners and others thus places organizations with multinational operations at serious risk of embarrassment and of violating such laws⁵.

Cost. The third consideration is more mundane: retention of millions of e-mails for anything other than a short period of time may be very expensive, particularly if any effort is expended on categorization or indexing. Adding to this the cost of searches related to lawsuits or other legal action in a poorly structured or completely unstructured environment could make the long-term retention of e-mail prohibitively expensive.

Short-period retention seeks to mitigate the above issues by a simple device - place a single, non-categorical and relatively short retention period on all e-mail and purge all e-mail upon expiration of that period. The benefits of this approach are obvious and substantial - legal risks are substantially reduced simply by reducing to some minimum the backward-looking window into which an investigation or other inquiry can inquire. The availability of past e-mails is limited in its scope or volume. Many issues, such as retaining personal information for an excessive period of time, are avoided entirely. Costs are contained by keeping to a minimum the hardware, software and other infrastructure needed to support e-mail, and by reducing the amount of time and other resources expended on searches and other activity related to the e-mail. This approach also has the qualities of simplicity and relative ease of administration, which are highly desirable in view of the formidable cost, and administrative and technical issues inherent in any attempt to manage large volumes of e-mail on a categorical basis. Additionally, this approach recognizes that e-mail is not an end product in, and of, itself. Just like phone calls and other forms of communication, both formal and informal, any information from an e-mail that is acted upon is typically memorialized in some form of identifiable transaction, document, policy or procedure.

The benefits of this strategy must be weighed against the potential drawbacks of not having a large body of written communication available, including:

- Potentially useful information may be purged prior to expiration of its useful life;
- E-mail, if it is the only medium used to establish regulatory compliance or for some other mandatory purpose, may not be available to demonstrate compliance in the event of a dispute;

³ The European Union Data Privacy Directive, the model for most such laws, is in force in the E.U., thereby affecting most of Western Europe; in addition, such widespread jurisdictions as Hong Kong, Australia, India and many Latin American countries have or will shortly enact similar legislation.

⁴ See, e.g. regulations under the *Health Insurance Portability and Accountability Act of 1996 (HIPPA)*, found at 45 C.F.R. Part 164 (United States).

⁵ See, e.g. The Wall Street Journal, *Online Laundry: Government Posts Enron's E-Mail*, October 6, 2003 p.1. (Corporate e-mail gathered by government agency as part of regulatory probe and posted on public web site found to contain personal information including social security numbers).

- Contracts, or modifications to contracts, may become unenforceable if e-mail constituted a significant part of the process.

There is, in addition, the ever-present possibility that employees who feel the retention period chosen is inappropriate will attempt to circumvent the system by storing e-mail in locations not subject to the purge processes. An assessment of short-term retention benefits needs to be weighed against potential drawbacks, penalties or other costs before implementing such a strategy.

A modification to short-term retention which seeks to avoid these drawbacks is selective retention. In this scenario, e-mail defaults to a single, short retention period, but legally or operationally significant categories are identified, defined and segregated for longer-term retention. This strategy seeks the best of both worlds: Short-term retention of most e-mail, thereby accruing cost savings and risk reduction, while maintaining those items that appear to have operational or legal value, thereby reducing or eliminating the risks associated with blanket short-term retention. The issue of the consistent classification of e-mail complicates this alternative.

A Survey of Draft and Current E-Mail Record Retention and Archival Classes

Within the remainder of this document, where possible, the record retention categories are identified in **bold** type and the records retention periods are underlined.

State of Iowa E-Mail Records Categories from the Proposed E-Mail Policy (Draft Chapter 671-15, Iowa Administrative Rules Dated January, 2004)⁶

"Non-official messages" are those that do not meet the legal definition of a record and may be deleted at any time unless they become part of an official record as a result of special circumstances.

"Transitory messages" are e-mail messages that meet the legal definition of a record and are official records but do not set policy, establish guidelines or procedures, certify a transaction or become a receipt. Transitory documents include telephone messages, drafts and other limited document which serve to convey information of temporary importance in lieu of oral communication.

"Temporary messages" are e-mail messages that meet the legal definition of a record and are official records that have significant administrative, legal and/or fiscal value but do not have long-term historical value. These messages are records classified as part of a records series with established records series retention and disposition schedules. Disposal of these records is required when the period for retention as specified in the governing records series retention and disposition schedule has been fulfilled.

⁶ The E-mail records categories shown here were included in draft e-mail rules under consideration by the State Records Commission. A significantly revised version of the e-mail rules was approved at the July, 2005 Records Commission Meeting. The revised e-mail rules (IAC Chapter 671-15) were filed September 9, 2005; published September 28, 2005; and become effective November 2, 2005. See Appendix 1 of this document for a reproduction of IAC Chapter 671-15.

"Permanent messages" are e-mail messages that meet the legal definition of a record and are official records that have significant administrative, legal and/or fiscal value and also have long-term historical value. These messages are records classified as part of a records series with established records series retention and disposition schedules. These records are maintained in the office of record in accord with the time frames in the records series retention and disposition schedules and are then preserved as permanent records for research use by future generations.

State of Texas

State of Texas Records Categories

- (1) **Administrative Correspondence, 1.1.007** - Incoming/outgoing and internal correspondence, in any format, pertaining to the formulation, planning, implementation, interpretation, modification, or redefinition of the programs, services, or projects of an agency and the administrative regulations, policies and procedures that govern them. Subject to Archival review. Retention: 3 years.
- (2) **General Correspondence, 1.1.008** - Non-administrative incoming/outgoing and internal correspondence, in any media, pertaining to or arising from the routine operations of the policies, programs, services, or projects of an agency. Retention: 1 year.
- (3) **Transitory Information, 1.1.057** - Records of temporary usefulness that are not an integral part of a records series of an agency, that are not regularly filed within an agency's recordkeeping system, and that are required only for a limited period of time for the completion of an action by an official or employee of the agency or in the preparation of an on-going records series. Transitory records are not essential to the fulfillment of statutory obligations or to the documentation of agency functions. Examples of transitory information are routine messages (can be recorded on any medium, such as hard copy message slips or in an electronic format on e-mail and voice mail); internal meeting notices; routing slips; incoming letters or memoranda of transmittal that add nothing of substance to enclosures; and similar routine information used for communication, but not for the documentation, of a specific agency transaction. Retention: AC (after purpose of record has been fulfilled).

Indiana Commission On Public Records (ICPR)

All E-mail conducted on state government computers is owned by the State of Indiana and is a public record. The General Assembly essentially precludes any state agency or state employee from determining individually what is or is not a record: anything, on any medium, and created for any governmental purpose, falls under the rubric of public records law (see page 6, IC 5-14-3-1).

Consequently, all E-mail messages are public records and are subject to records retention requirements. To satisfy public records laws, E-mail is defined not only as messages sent and received by E-mail systems, but as all transmission and receipt data (including forward headers and transmission data found at the foot of e-mail messages).

At this time, an absolute retention period for e-mail has not been established. ICPR is working with other agencies to develop e-mail retention timeperiods and guidelines.

Delaware Public Archives Categories Of E-Mail Messages That Have Specific Retention Periods

Retention Specific Records

Records with retention periods that are time-limited or linked to specific events (e.g. 6 months; 5 years; termination of employee; 3 years after close of case; 3 years after last visit; etc.). Examples of time-limited records are, but not limited to:

1. Case Files
2. Telephone Logs
3. Incident Reports
4. Unsuccessful Applications
5. Record Request Forms

Retention Specific Records should be retained for the length of their stated retentions. Records meeting this definition can be routinely destroyed in the normal course of business by an agency, assuming there are no outstanding legal or audit issues.

Administrative Support Records

Records of a general facilitative nature created or received in the course of administering programs. Included are such records as:

1. Correspondence of a routine or repetitive type, such as requests for information;
2. Inter-office or inter-departmental communications which do not subsequently result in the formulation of policy;
3. Reference materials, sometimes of a technical nature, used but not created by the office;
4. Daily, weekly, or monthly office activity reports which are summarized in annual reports or which relate to routine activities (including work progress or statistical reports prepared in the office and forwarded to higher levels);
5. Personnel data of office staff which is duplicated in departmental personnel record;
6. Purchase orders, payment vouchers, travel expense statements or similar financial documents which are duplicated in department/division fiscal office files;
7. Daily, weekly, or monthly work assignments (including duty roster files) for office staff;
8. Calendars, appointment books, schedules, logs, diaries, and other records documenting meetings, appointments, telephone calls, trips, visits, and other daily activities of state employees; and
9. Unpublished calendars of events and activities.

Administrative Support Records should be retained at the agency until a successful audit has been completed and then destroyed. Records meeting this definition can be routinely destroyed in the normal course of business by an agency.

Policy and Program Records (Primary Mission Files) are defined as:

Records documenting the formulation and adoption of policies and procedures and the implementation or management of the programs or functions of the office or department. Included are such records as:

1. Policies and procedures developed by the agency which govern the operation of the agency;
2. Correspondence with citizens or other government officials regarding policy, procedure development, or program administration;
3. Annual, ad hoc, narrative, or statistical reports on program activities, achievements or plans;
4. Organizational charts and mission statements;
5. Studies regarding department or office operations;
6. Circular letters, directives or similar papers addressed to subordinate units or staff concerning policies, procedures or programs;
7. Records related to significant events in which the department or office participated; and
8. Photographs, published material, audio tapes and other record forms.

Policy and Program Records should be retained permanently and should be scheduled for transfer to DPA at some time during their life cycle.

Maine State Archives Categories Of E-Mail Messages That Have Specific Retention Periods

Short-Term Retention - Retain for 60 days, then Delete

This transitory correspondence, while part of state government business, is purely informational with a very short time value, and includes the following:

Employee Activities

- notices of employee activities: holiday parties, softball games, etc.
- invitations and responses to invitations to work-related events

Routine Business Activities

- thank-you's: "thanks for the copy of ..."
- requests for information from the public
- outgoing transmittal messages (like cover letters): "enclosed (attached) find copies of . . ."
- replies to questions: "we're open 8 to 5", "our address is . . .", "the deadline is . . ."

Intermediate Retention - Retain According to Schedule

These records are specified either in the "General Schedule" for all agencies, or the agency's specific retention schedules. If they are not clearly specified, consult your

agency Records Officer for clarification or obtain further guidance from the State Archives' Records Management Services Division.

Permanent Retention - Retain until Archival Copies Are Made

E-mail documenting state policy or the policy process is a prime candidate for permanent retention. Check your official retention schedules or contact the Archives' Records Management Services Division.

Records with permanent value include, but are not limited to, the following:

- (1) documentation of state policy (laws, rules, court decisions).
- (2) documentation of the policy process (minutes of meetings, transcripts of selected hearings).
- (3) protection of vital public information (births, deaths, marriages; corporate charters; critical environmental data and reports).

Ohio Electronic Records Committee Categories Of E-Mail Messages and Their Retention Periods

Non-Record Materials

E-mail messages that do not meet the criteria of the Ohio Revised Code definition of a record may be deleted at any time, unless they become part of some official record as a result of special circumstances. These types of messages may include:

Personal Correspondence

Any e-mail not received or created in the course of state business, may be deleted immediately, since it is not an official record: the "Let's do lunch" (not a State-business lunch) or "Can I catch a ride home" type of note.

Non-State Publications

Publications, promotional material from vendors, and similar materials that are "publicly available" to anyone, are not official records unless specifically incorporated into other official records. In the electronic world, this includes listserve messages (other than those you post in your official capacity), unsolicited promotional material ("spam"), files copied or downloaded from Internet sites, etc.

These items may be immediately deleted, or maintained in a "Non-Record" mail box and deleted later, just as you might trash the unwanted publication or promotional flyer.

However, for example, if you justify the purchase of a "Zippo Filing System" by incorporating the reviews you saved (from the "Files R Us Listserve") in your proposal to your boss, those listserve messages become official records and must be retained in accordance with the retention schedule for purchasing proposals.

Official Records -- Retain As Required

E-mail messages that meet the definition of a record in the Ohio Revised Code (ORC) are official records and must be scheduled, retained and disposed of as such. These official records fall into the following categories:

Transient Retention

Much of the communication via e-mail has a very limited administrative value. For instance, an e-mail message notifying employees of an upcoming meeting would only have value until the meeting has been attended or the employee receiving the message has marked the date and time in his/her calendar.

Transitory messages do not set policy, establish guidelines or procedures, certify a transaction or become a receipt. The informal tone of transitory messages might be compared to a communication that might take place during a telephone conversation or conversation in an office hallway. These types of records are transient documents and can be scheduled using the Department of Administrative Services (DAS)

General Schedules:

- Transient Documents: Includes telephone messages, drafts and other limited documents which serve to convey information of temporary importance in lieu of oral communication.

Retention: Until no longer of administrative value, then destroy.

Intermediate Retention

E-mail messages that have more significant administrative, legal and/or fiscal value but are not scheduled as transient or permanent should be categorized under other appropriate record series. These may include (but are not limited to):

- General Correspondence: Includes internal correspondence (letters, memos); also, correspondence from various individuals, companies, and organizations requesting information pertaining to agency and legal interpretations and other miscellaneous inquiries. This correspondence is informative (it does not attempt to influence agency policy).

Retention: 1 year, then destroy

- Routine Correspondence: Referral letters, requests for routine information or publications provided to the public by agency which are answered by standard form letters.

Retention: 6 months, then destroy

- Monthly and Weekly Reports: Document status of on-going projects and issues; advise supervisors of various events and issues.

Retention: Retain 1 year, then destroy

- Minutes of Agency Staff Meetings: Minutes and supporting records documenting internal policy decisions.

Retention: Retain 2 years, then transfer to State Archives for their possible retention or destruction.

Permanent Retention

E-mail messages that have significant administrative, legal and/or fiscal value and are scheduled as permanent also should be categorized under the appropriate record series. These may include (but are not limited to):

- Executive Correspondence: Correspondence of the head of an agency dealing with significant aspects of the administration of their offices. Correspondence

includes information concerning agency policies, program, fiscal and personnel matters.

Retention: 2 years, then transfer to State Archives

- Departmental Policies and Procedures: Includes published reports, unpublished substantive reports and policy studies.

Retention: Retain until superseded, obsolete or replaced, then transfer to State Archives for their possible retention or destruction.

Alabama State Records Commission Categories Of E-Mail Messages and Their Retention Periods

As government records, e-mail messages are subject to the same retention requirements as the same type of record in another format or medium. The [Code of Alabama 1975, Sections 41-13-21 & 41-13-23](#), prohibits a public official from destroying any public record without the approval of the State or Local Government Records Commissions. This requirement means that government e-mail messages must be retained and disposed of according to the records disposition authority (RDA) approved by the appropriate records commission for that agency. Retention periods for an e-mail record will vary according to the information the message contains and the function the message performs. E-mail messages must, according to Alabama law, be kept for the *minimum* retention period identified in the RDA approved for that agency. The content and purpose of the e-mail message determines its classification and how long it should be retained.

If an agency does not have an RDA, the agency should contact the Government Records Division of the Department of Archives and History at (334)242-4452 or at the following e-mail address: records@archives.state.al.us.

E-mail messages may have one of three different retention classifications depending on the value of the records to the agency:

1. Transitory records are records of no meaningful value to an agency for documenting its work and may be destroyed as soon as they are no longer needed. Some examples of these types of messages are notes sent to a co-worker setting lunch-time; communications received from a professional listserv that are not used for project development or creation of policy; or, general announcements received by all employees such as news of an upcoming fire drill or an impending building repair. These records can be disposed of when they are no longer needed.

2. Temporary records have documentary value but do not need to be retained permanently. The retention period of these records is determined by their administrative, fiscal, or legal needs. This time period may range from a few months to several years and should be defined in the agency's RDA. These records must remain accessible for the *entire* retention period specified in the RDA. E-mail records in this category should be managed and maintained like the rest of the agency's temporary records. Public inquiries about the services of an agency or official submittals for licensing updates are an example of this type of e-mail record.

3. Permanent records are programmatic records of the agency that have historical value because they document the function and duties of the agency over time. A message from the head of an agency to the head of another agency detailing a shift

in the way the two agencies work together may be an example of programmatic correspondence that should be retained permanently. For state agencies, these records may eventually be transferred to the Department of Archives and History. For local government agencies these records must be retained locally in a format that will allow them to be accessible permanently.

Due to the proliferation of personal computers and the ease with which e-mail messages can be created and destroyed, it is important that all government employees with access to e-mail be trained in using their agency's RDA to identify the types of records they create and receive and that they be made aware of the retention periods for these records. The creator of the record, i.e., the author of the message, is usually the person who makes the initial retention decision, but the recipient also has to make a retention decision based on the nature of the message within the scope of his or her responsibilities.

Michigan State Archives Records Classifications

- **Operational value** is the first and primary value of all records. It exists at the time of creation, and lasts until the creator and primary users cease to actively use the record. All other values are secondary to this value.
- **Fiscal value** exists as long as the record documents any unsettled financial transaction. These records include receipts, statistics, etc. Fiscal value usually extends until an audit of the transaction takes place.
- **Legal value** exists as long as the record is discoverable in a court of law. Some records have retention periods that are established by law; other records document an activity that is subject to litigation. It is important to recognize that some records are disposed of routinely, according to a retention and disposal schedule so the office of creation cannot be held liable for the contents of the record. However, no records may be destroyed when legal action is taking place. Penalties for inappropriately destroying a record (obstruction of justice) are severe.
- **Historical/Archival value** exists when records document significant government activities, or when they contain information about Michigan's population that warrants their permanent preservation.

Louisiana State Archives E-Mail Policy (excerpt)

Electronic Mail (E-mail) is not a record series for retention scheduling purposes. Rather, the retention of E-mail must be based on content, not on media type, artificial duration (i.e. 90 days) or on storage limitations. E-mail should be retained for the same duration as other records of similar content included in a given record series on an approved retention schedule.

This policy applies to all Louisiana public bodies as defined in LA. R. S. 44:1. This policy does not apply to the transitory E-mail records (those E-mails having limited or no administrative value to the public body and not essential to the fulfillment of statutory obligations or to the documentation of the public body) generated or received by a public body.

Transitory information includes the following: unsolicited and junk E-mails not related to agency work, Listserv and other E-mail broadcast lists that require subscription (including newspapers), reminders for meetings and events (i.e. cake in the conference room, staff meeting moved from 2:00 p.m. to 3:00 p.m.), and personal non-work related E-mails received by employees.

There is no retention requirement for transitory messages. Public officials and employees receiving such communications may delete them immediately without obtaining approval from the State Archives.

Responsibilities - All public bodies that fall under the scope of this policy must maintain their E-mail in a manner that complies with that public body's approved retention schedule and the records management practices already established for other media (paper, film) as required by law.

If a record series cannot be identified, a record series should be developed and included on the public body's approved retention schedule. Until the series is scheduled the E-mail should be maintained for at least three years.

Connecticut E-Mail (and Voice-mail) Records Retention Policies

Any recorded data or information relating to the conduct of the public's business prepared, owned, used, or received by a public agency, whether such data or information be handwritten, typed, tape-recorded, printed, Photostatted, photographed or recorded by any method.

A message sent or received by E-mail in the conduct of public business is a public record.

Retention Guidelines

E-mail messages sent and received by public officials fall within three broad categories. Retention guidelines for each of these categories are as follows:

- **Transitory messages** - No retention requirement. Public officials and employees receiving such communications may delete them immediately without obtaining the approval of the Office of the Public Records Administration and State Archives.
- **Less than Permanent** - Follow retention period for equivalent hard copy records as specified in an approved retention schedule. The record must be in hard copy or electronic format which can be retrieved and interpreted for the legal retention period. When there is a doubt about the retrievability of an electronic record over the life span of that record, the record should be printed out. Municipalities and state-agency officials may delete or destroy the records only after receiving signed approval from the Office of the Public Records Administrator.
- **Permanent or Permanent/Archival** - Retention may be in the form of a hard-copy printout or microfilm that meets microfilm standards issued in GL 96-2. The information must be eye readable without interpretation.

Voice mail (including answering machines) can be considered a type of electronic mail communication. In this case, the message is recorded in an audible rather than a visible format. Voice mail is transitory in nature, and may be deleted at will. There are times, however, where voice mail or answering machine messages may require a

longer retention period. This would be in the case where the message may be potentially used as evidence in a trial, such as a bomb threat, or in some other illegal activity. Voice mail may also be subject to the discovery process in litigation.

Federal Records Act (FRA) & the National Archives and Records Administration (NARA)

Federal Records Act (FRA): Requires federal agencies to make and preserve records that document the actions of the federal government. Generally, records are those documents, regardless of media, that record agency functions, policies, decisions, procedures and essential transactions. The mandates of the FRA require federal agencies to have the capabilities to create and maintain trustworthy records. Trustworthy records not only help preserve the rights of the government and its citizens but also promote quality decision making and efficient business practices.

The FRA charges NARA with providing guidance and assistance to federal agencies with respect to ensuring adequate and proper documentation of the policies and transactions of the Federal Government and ensuring proper records disposition.

§1222.34 Identifying Federal records.

(a) *General.* To ensure that complete and accurate records are made and retained in the Federal Government, it is essential that agencies distinguish between records and nonrecord materials by the appropriate application of the definition of records (see 44 U.S.C. 3301 and 36 CFR 1220.14) to agency documentary materials. Applying the definition of records to most documentary materials created or received by agencies presents few problems when agencies have established and periodically updated recordkeeping requirements covering all media and all agency activities at all levels and locations.

(b) *Record status.* **Documentary materials** are records when they meet both of the following conditions:

- (1) They are made or received by an agency of the United States Government under Federal law or in connection with the transaction of agency business; and
- (2) They are preserved or are appropriate for preservation as evidence of agency organization and activities or because of the value of the information they contain.

(c) *Working files and similar materials.* **Working files**, such as preliminary drafts and rough notes, and other similar materials shall be maintained for purposes of adequate and proper documentation if:

- (1) They were circulated or made available to employees, other than the creator, for official purposes such as approval, comment, action, recommendation, follow-up, or to communicate with agency staff about agency business; and
- (2) They contain unique information, such as substantive annotations or comments included therein, that adds to a proper understanding of the agency's formulation and execution of basic policies, decisions, actions, or responsibilities.

(d) *Record status of copies.* The determination as to whether a particular document is a record does not depend upon whether it contains unique information. Multiple copies of the same document and documents containing duplicative information,

including messages created or received on electronic mail systems, may each have record status depending on how they are used to transact agency business. See paragraph (f)(2), below, concerning the nonrecord status of extra copies.

(e) *Electronic mail messages.* Messages created or received on electronic mail systems may meet the definition of record in 44 USC 3301.

(f) *Nonrecord materials.* Nonrecord materials are Government-owned documentary materials that do not meet the conditions of record status (see §1222.34(b)) or that are specifically excluded from status as records by statute (see 44 U.S.C. 3301):

- (1) Library and museum material (but only if such material is made or acquired and preserved solely for reference or exhibition purposes);
- (2) Extra copies of documents (but only if the sole reason such copies are preserved is for convenience of reference); and
- (3) Stocks of publications and of processed documents. (Each agency shall create and maintain serial or record sets of its publications and processed documents, as evidence of agency activities and for the information they contain, including annual reports, brochures, pamphlets, books, handbooks, posters and maps.)

(g) *Agency responsibilities.* Agencies shall take appropriate action to ensure that all staff are capable of identifying Federal records. ***For electronic mail systems, agencies shall ensure that all staff are informed of the potential record status of messages, transmittal and receipt data, directories, and distribution lists.***

Federal Environmental Protection Agency Guidelines

E-Mail Messages Are Records When...

- they are made or received by an agency under Federal law or in connection with public business; and
- they are preserved or are appropriate for preservation as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government, or because of the information value of the data they contain.

Principal Categories of Materials to Be Preserved

- Records that document the formulation and execution of basic policies and decisions and the taking of necessary actions.
- Records that document important meetings.
- Records that facilitate action by agency officials and their successors.
- Records that make possible a proper scrutiny by the Congress or by duly authorized agencies of the Government.
- Records that protect the financial, legal, and other rights of the Government and of persons directly affected by the Government's actions.

E-Mail Messages That May Constitute Federal Records

- E-mail providing key substantive comments on a draft action memorandum, if the e-mail message adds to a proper understanding of the formulation or execution of Agency action.
- E-mail providing documentation of significant Agency decisions and commitments reached orally (person-to-person, by telecommunications, or in conference) and not otherwise documented in Agency files.
- E-mail conveying information of value on important Agency activities, if the e-mail message adds to a proper understanding of Agency operations and responsibilities.

Points to Remember about E-Mail

- Agency e-mail systems are for "official use" only by authorized personnel.
- Before deleting any e-mail message, the author should determine whether it meets the legal definition of a record and, if so, preserve a copy of the message.
- Printed messages kept as a record should contain essential transmission, receipt data, and attachments; if not, print the data or annotate the printed copy.
- Printed messages and essential transmission and receipt data should be filed with related files of the office.
- Delete messages that are not records when no longer needed.
- Delete messages that are records, after they have been placed in a recordkeeping system.
- When e-mail is retained as a record, the periods of its retention are governed by records retention schedules.

Appendix 1. State Records Commission E-Mail Retention Rules - Iowa Administrative Code Chapter 671-15

671—15.1(17A,305) Definitions.

"*E-mail*" is a computer-generated message transmitted or received by means of a computer network. An E-mail may contain any combination of text, Internet Uniform Resource Locator (URL) links, attached files and associated metadata.

"*E-mail messages*" are individual E-mail transmissions sent or received.

"*Metadata*" is the contextual information (i.e., sender, recipient, creation date, transmission information) that is used to understand and access other information.

"*Record*" means a document, book, paper, electronic record, photograph, sound recording, or other material regardless of physical form or characteristics, made, produced, executed, or received pursuant to law in connection with the transaction of official business of state government. "Record" does not include library and museum material made or acquired and preserved solely for reference or exhibition purposes, additional copies of records maintained or distributed for reference purposes, or stocks of publications and unprocessed forms.

671—15.2(17A,305) E-mail messages as records.

15.2(1) E-mail messages are records as defined in rule 671—15.1(17A,305) when sent or received in the course of conducting state business.

15.2(2) In order to determine the proper retention and disposition, E-mail messages must be evaluated for content and purpose. E-mail messages that meet the definition of "record" must be retained and disposed of in accordance with records series retention and disposition schedules which have been approved by the records commission.

15.2(3) Approved record series retention and disposition schedules for state government records of Iowa are available through the state records manual. Agencies may request additions and changes to the schedules by submitting a request to the records commission in accordance with 671—Chapter 3.

15.2(4) To protect the integrity of information contained in E-mail messages that meet the definition of "record," they must be maintained as authentic, reliable and trustworthy records for their entire retention period. Unauthorized users must not be able to modify, destroy or distribute E-mail messages from an E-mail storage system.

These rules are intended to implement Iowa Code chapter 305.

[Filed 9/9/05, Notice 8/3/05—published 9/28/05, effective 11/2/05]